

REMARKS

The rejections/objections will be addressed in the order set out in the Office Action dated September 20, 2004.

Authorization to act on behalf of the assignee

The Examiner alleges that Ms. Linda Stevenson does not have authorization to act on behalf of the assignee because her title does not indicate that she is an officer of the assignee, thus she is presumed to lack authority to sign. Applicants submit herewith a copy of an Attestation that demonstrates that Linda S. Stevenson is duly authorized by the Regents of the University of California to execute documents related to this application. Applicants believe that this document establishes the proper authority.

Declaration

The Examiner is requiring a new declaration. A corrected Declaration including the statement required by the Examiner is submitted herewith.

Title of the Application

The Examiner alleges that the title must relate to the entire "plant". Applicants have amended the title in accordance with the Examiner's suggestion and therefore respectfully request withdrawal of the objection.

Objections to the Disclosure

The disclosure was objected to for reasons set forth in the Office Action under letters A-M. Each item is addressed in the order presented.

A. The specification has been amended at the last line of paragraph 3 to add a statement that the cultivar is stable and reproduces true to type in successive generations of asexual reproduction.

B. The Examiner alleges that applicants should set forth in the specification a botanical description of the instant cultivar stolon's average diameter at the base. Applicants first note that this information is currently not available. Objective measurements would not be available until the spring at the earliest. Moreover, Applicants note that this information adds little to the determination of the uniqueness of this cultivar and respectfully request that the Examiner reconsider this objection. Should the objection be maintained, Applicants also respectfully request clarification of the information to be provided. For example, does this refer to the diameter of the stolon for the first daughter plant?

C. The information for the petal number of the claimed cultivar was inadvertently omitted from Table 2. Table 2 has been amended to provided the requested information.

D. Applicants have amended the specification after paragraph 13 to add a new paragraph that states that the habit is semi-erect to prostrate, usually semi-erect. The relative position of the inflorescence to the leaves is exposed, or above the foliage. Applicants note that the actual length of the inflorescence depends on the size of the plant itself. Plant size depends on location and culture. Applicants believe that the amendment addresses the objection in a meaningful manner and therefore respectfully request withdrawal of the aspect requesting the addition of the average length information.

E. The information regarding color of the achenes with reference to a color chart and the average number of achenes per berry will not be available until spring at the earliest. Applicants note that the number per berry depends on the size of the fruit, and would differ substantially due to factors such as primary vs. secondary fruit, time of year, and culture. Thus, it is not clear how this information will be useful in differentiating cultivars. Further, it is not clear how the reference to the achene color in the specification with reference to a color chart, rather than by visual inspection, will be valuable for demonstrating the uniqueness of the cultivar. Applicants therefore respectfully request reconsideration of this requirement.

F. Applicants have added a new paragraph (new paragraph 17) to state that the secondary fruit is similar in shape to primary fruit and is generally about 75%, subjectively, of the size, although this is variable through the season and culture conditions.

G. New paragraph 17 also includes a statement that the calyx for secondary fruit can vary from slightly larger than the berry to slightly smaller, depending on the season.

H. New paragraph 15 includes an amendment to the paragraph stating that the adherence of the calyx to the fruit is medium.

I. New paragraph 15 also includes an amendment to the paragraph stating that the hollow portion of the fruit interior generally ranges from about 0-15%, subjectively, and is variable with culture and season.

J. New paragraph 16 has been added. It states that Albion' is substantially sweeter than 'Diamante' throughout the season, but has moderate acid levels as well. Average brix was 8.5 and average acidity was 0.74 for two evaluations performed on two dates in 2003.

K. The average berry weight was set forth in Table 4 of the application as filed. Applicants have additionally amended new paragraph 15 to state that the average berry weight is 33 grams

L. Table 4 has been amended to include a description of the fruit firmness determination.

M. New paragraph 20 has been amended to include an exemplary flowering and fruiting schedule for Watsonville, California.

In view of the above remarks and the substitute specification, Applicants believe that all of the objections have been addressed and respectfully request their withdrawal.

Rejection under 35 U.S.C. § 112, first and second paragraph

Claim 1 was rejected under 35 U.S.C. § 112, first and second paragraph as allegedly not supported by a clear and complete botanical description. Applicants respectfully request withdrawal of the rejections in view of the substitute specification accompanying this response as well as the remarks made above.

Appl. No. 10/769,471
Amdt. dated December 20, 2004
Reply to Office Action of September 20, 2004

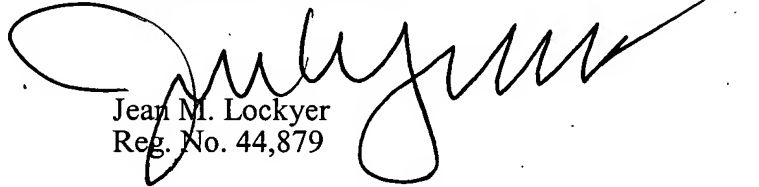
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CONCLUSION

In view of the foregoing, Applicants believe the claim now pending in this Application is in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jean M. Lockyer', is written over the typed name and registration number.

Jean M. Lockyer
Reg. No. 44,879

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